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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/688,770 | 10/16/2003 | Gregory Gene Raleigh | CISCP635X1C2 | 9528 |

26541 7590 01/12/2007
Cindy S. Kaplan
P.O. BOX 2448
SARATOGA, CA 95070

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| EXAMINER |
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SOBUTKA, PHILIP

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| ART UNIT | PAPER NUMBER |
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2618

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
|--|------------|---------------|
| 3 MONTHS | 01/12/2007 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/688,770

Applicant(s)

RALEIGH ET AL.

Examiner

Philip J. Sobutka

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 31-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claim 31 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,101,399. Although the conflicting claims are not identical, they are not patentably distinct from each other because while the patented claim teaches a method it would have been obvious to one of ordinary skill in the art to produce an apparatus to perform the method.

3. Claim 33 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 6 of U.S. Patent No. 6,101,399. Although the conflicting claims are not identical, they are not patentably distinct from each other

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because while the patented claim teaches a method it would have been obvious to one of ordinary skill in the art to produce an apparatus to perform the method.

4. Claim 34 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,101,399. Although the conflicting claims are not identical, they are not patentably distinct from each other because while the patented claim teaches a method it would have been obvious to one of ordinary skill in the art to produce a product for performing the method on a computer.

5. Claim 36 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 6 of U.S. Patent No. 6,101,399. Although the conflicting claims are not identical, they are not patentably distinct from each other because while the patented claim teaches a method it would have been obvious to one of ordinary skill in the art to produce a product for performing the method on a computer.

6. Claim 31 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,665,545. Although the conflicting claims are not identical, they are not patentably distinct from each other because while the patented claim teaches a method it would have been obvious to one of ordinary skill in the art to produce an apparatus to perform the method.

7. Claim 32 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 2 of U.S. Patent No. 6,665,545. Although

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the conflicting claims are not identical, they are not patentably distinct from each other because while the patented claim teaches a method it would have been obvious to one of ordinary skill in the art to produce an apparatus to perform the method.

8. Claim 33 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 3 of U.S. Patent No. 6,665,545. Although the conflicting claims are not identical, they are not patentably distinct from each other because while the patented claim teaches a method it would have been obvious to one of ordinary skill in the art to produce an apparatus to perform the method.

9. Claim 34 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,665,545. Although the conflicting claims are not identical, they are not patentably distinct from each other because while the patented claim teaches a method it would have been obvious to one of ordinary skill in the art to produce a product for performing the method on a computer.

10. Claim 35 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 2 of U.S. Patent No. 6,665,545. Although the conflicting claims are not identical, they are not patentably distinct from each other because while the patented claim teaches a method it would have been obvious to one of ordinary skill in the art to produce a product for performing the method on a computer.

11. Claim 36 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 3 of U.S. Patent No. 6,665,545. Although

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the conflicting claims are not identical, they are not patentably distinct from each other because while the patented claim teaches a method it would have been obvious to one of ordinary skill in the art to produce a product for performing the method on a computer.

Response to Amendment

12. Applicant's arguments with respect to claims 31-36 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip J Sobutka whose telephone number is 571-272-7887. The examiner can normally be reached Monday through Friday from 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew D. Anderson can be reached on 571-272-4711.

14. The central fax phone number for the Office is 571-273-8300.

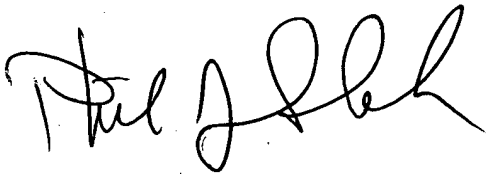
Most facsimile-transmitted patent application related correspondence is required to be sent to the Central FAX Number.

CENTRALIZED DELIVERY POLICY: For patent related correspondence, hand carry deliveries must be made to the Customer Service Window (now located at the Randolph Building, 401 Dulany Street, Alexandria, VA 22314), and facsimile transmissions must be sent to the Central FAX number, unless an exception applies. For example, if the examiner has rejected claims in a regular U.S. patent application, and the reply to the

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examiner's Office action is desired to be transmitted by facsimile rather than mailed, the reply must be sent to the Central FAX Number.

15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Philip J. Sobutka". The signature is fluid and cursive, with the first name "Philip" and last name "Sobutka" clearly distinguishable.

PHILIP J. SOBUTKA
PATENT EXAMINER

Philip J Sobutka

(571) 272-7887